

IN THE UNITED STATES PATENT OFFICE

In re Application of: David A. Monroe)	Group No.:	2621
Serial No.: 09/866,984)	Examiner:	Tung Vo
Filed: 29 May 2001)	Confirmation No.:	7399
For: MODULAR SENSOR ARRAY)		
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MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.182 FOR ACCEPTANCE OF RCE

Dear Sir:

In response to Examiner's Final Office Action of March 16, 2007, a response was filed on August 16, 2007. Due to apparent clerical error the files as uploaded to the PTO via EFS were identified as Amendment After Final and the requisite coversheet for a Request for Continued Examination under C.F.R. § 1.114 was not provided.

The text of the first paragraph on the first page of the August 16, 2007 response clearly stated "Applicant respectfully submits a request for continuing examination, and requests the Examiner to consider the arguments and amendments set forth herein as follows:" but was apparently overlooked.

Perceived not as an RCE but as simply an Amendment After Final, an Advisory Action was sent on August 27, 2007 indicating that the Reply filed on 16 August 2007 was filed after a final rejection but before a Notice of Appeal and that the Amendments as offered raised new issues that would require further consideration and/or a search – and therefore would not be entered.

The Amendments were offered as an RCE because they it was expected that further consideration and/or a search would be required. This intention was apparently overlooked by the receiving office in considering the Reply as an Amendment After Final and not an the intended RCE.

Due to further clerical error, it would appear that the Advisory Action was perceived as a First Office Action Final and an Appeal Brief was prepared and filed on January 14, 2008. This Appeal Brief has generated a Notice of Non-Compliance because it presents the claims provided in what was believed to be the submitted and accepted RCE. The arguments as currently presented articulate the points of the claims as believed to exist, such that a substitution of the prior claim set would be confusing.

In review of the file wrapper, the inadvertent misfiling and misidentification of the August 16, 2007 RCE has now been realized. In a telephone conversation between the undersigned attorney, Daniel W. Roberts, and Examiner Tung Vo, the apparent confusion has been discussed. Examiner Vo has noted the language in the first paragraph of the August 16, 2007 response and that it was unfortunately not recognized at the time.

Examiner Vo has consulted with his superiors and suggests that we proceed to re-file the case as an RCE and provide this petition to request acceptance of the re-submitted RCE. Examiner Vo offers the opinion and suggestion that returning the case to the status of an RCE will permit proper entry and consideration of the Amendments and Response as originally intended. If a future final office action should arise, then the case will be in proper condition for appeal, the current appeal being withdrawn in light of the restoration of the case as an RCE.

Respectfully, the present condition of the application was most definitely not intentional. The Director's allowance of this petition for acceptance of the RCE is most respectfully requested. With regard to any fees due in connection with this Petition, the Commissioner is authorized to charge the petition fee as set forth in C.F.R. § 1.17(f) for the amount of \$400 to deposit account 504104 referencing the Attorney docket number 620002.2. Should there be any additional fees due for unintended delay in properly filing the Request for Continued Examination, the commissioner is likewise authorized to charge those fees as well to deposit account 504104 referencing Attorney Docket Number 620002.2.

Respectfully submitted,

By: 

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